



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 30, 1994

Ms. Tamara Armstrong
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR94-792

Dear Ms. Armstrong:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 29332.

The Travis County District Attorney's Office (the "district attorney") has received a request for information relating to "DA Control Number 93-7909[,] *The State of Texas vs. James Harris*," a closed criminal case. Specifically, the requestor seeks "any documents, reports, investigations, or any information" relating to the case. You have submitted the requested information to us for review and claim that sections 552.101 and 552.111 of the Government Code except it from required public disclosure.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You assert section 552.101 in conjunction with section 102.003 of the Human Resources Code, section 242.127 of the Health and Safety Code, and common-law privacy. We conclude that section 242.127 of the Health and Safety Code makes all of the requested information confidential.

Chapter 242 of the Health and Safety Code governs the licensing of convalescent and nursing homes. Subchapter E of that chapter governs procedures for reports and investigations of abuse and neglect occurring in an institution licensed under chapter 242. Section 242.125 requires that a report of abuse or neglect be made "to the department or a local law enforcement agency." Section 242.127 provides as follows:

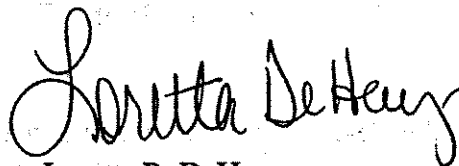
A report, record, or working paper used or developed in an investigation made under this subchapter is confidential and may be disclosed only for purposes consistent with the rules adopted by the [Texas Board of Health] or the designated agency.

Health & Safety Code § 242.127; cf. Attorney General Opinion JM-1048 (1989) at 4-5 (stating that statutory predecessor to section 242.127 of the Health and Safety Code, V.T.C.S. art. 4442c, § 16(h), makes confidential the reports, records, and working papers used or developed in a Texas Department of Health investigation of abuse or neglect).

We have examined the information submitted to us for review. It relates to an investigation conducted under chapter 242 of the Health and Safety Code and includes criminal history record information generated in the course of the investigation (Exhibit A); records of the nursing home implicated in the investigation (Exhibit B); and records gathered or prepared by the Texas Department of Health, the Austin Police Department, and the district attorney in the course of the investigation (exhibits C, D, and E). You assert section 242.127 of the Health and Safety Code only with respect to Exhibits B and C. Our review of the submitted information, however, makes clear that all of the requested information constitutes a "report, record, or working paper used or developed in an investigation made under [subchapter E]." Such information "may be disclosed only for purposes consistent with the rules adopted by the [Texas Board of Health]" or the district attorney. We are unaware that either the Texas Board of Health or the district attorney has adopted rules that permit disclosure of the requested information in this instance. Cf. 40 T.A.C. § 90.216 (regarding confidentiality of Texas Department of Human Services investigations of nursing facilities and related institutions). Accordingly, we conclude that the district attorney must withhold the requested information in its entirety under section 552.101 of the Government Code. As we resolve this matter under section 552.101, we need not address the applicability of section 552.111 at this time.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/GCK/rho

Ref.: ID# 29332

Enclosures: Submitted documents

cc: Mr. Jesús Tirrez
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(w/o enclosures)